

State of Utah
Department of Administrative Services
Division of Facilities Construction and Management
F. Keith Stepan
Director

Solicitation for Consultant Services

Value Based Selection Method

December 22, 2003

OLD MAIN BUILDING REMODEL AND SEISMIC UPGRADE SOUTHERN UTAH UNIVERSITY

Cedar City, Utah

DFCM Project No. 03234730

Table of Contents

Title Sheet

Table of Contents

Notice to Architects / Engineers

Project Description

Procurement Process

Project Schedule

Agreement Between Owner and Consultant

DFCM A/E Performance Rating

A/E & Contractor Evaluation of DFCM Performance

Current copies of the following documents are hereby made part of this Solicitation for Consultants (SFC) by reference. These documents are available on the DFCM web site at <http://dfcm.utah.gov> or are available upon request from DFCM.

CADD Standards

DFCM Design Criteria

General Conditions dated March 20, 2002

Building Board Policy Regarding Enhanced Accessibility to State Facilities (ADA)

Standard for Energy Efficiency in New State Buildings

Evaluation of the Braithwaite and Old Main Buildings, December 2001

NOTICE TO ARCHITECTS / ENGINEERS

The State of Utah - Division of Facilities Construction and Management (DFCM) is soliciting the services of qualified firms/individuals to perform design services for the following project:

OLD MAIN BUILDING REMODEL AND SEISMIC UPGRADE
SOUTHERN UTAH UNIVERSITY – CEDAR CITY, UTAH
DFCM PROJECT NO. 03234730

This project includes programming and design services for the remodel and seismic upgrade for Southern Utah University's Old Main Building. Construction budget for this project is \$2,432,000.

The selection shall be under the Value Based Selection method. The Solicitation for Consultants (SFC) documents, including the submittal requirements and the selection criteria and schedule, will be available beginning on Monday, December 22, 2003 from DFCM at the State Office Building - Room 4110, Salt Lake City, Utah 84114 and on the web site at <http://dfcm.utah.gov>. For questions regarding this solicitation, please contact Matthias Mueller, DFCM, at (801) 538-3018. No others are to be contacted regarding this solicitation.

A MANDATORY pre-submittal meeting will be held at 10:00 am on Friday, January 2, 2004 at the Old Main Building, Southern Utah University, Cedar City, Utah. All design firms wishing to submit on this project must attend this meeting.

Submittal dates for the required references, management plans, statements of qualifications, and interviews will be based on the Project Schedule included in the SFC.

The Division of Facilities Construction & Management reserves the right to reject any or all submittals or to waive any formality or technicality in any submittal in the interest of the State.

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT
SUSAN L. SMITH, CONTRACT COORDINATOR
4110 State Office Bldg., Salt Lake City, Utah 84114
Telephone: (801)538-3260

PROJECT DESCRIPTION

Introduction

This project includes programming and design services for the remodel and seismic upgrade for Southern Utah University's (SUU) Old Main Building. The remodeled facility will be the new home of SUU's administration offices.

The Old Main Building (1898) contains three levels, with the lower level a half story below grade. The building is approximately 60 feet in the east/west direction and 95 feet in the north/south direction and has an approximate floor area of 17,000 square feet.

Alliances between two or more consulting firms/individuals are allowed. However, the State will contract with only one legal entity. That legal entity will be the prime firm. Only an architectural consultant may propose as the prime firm.

Attached to this solicitation by reference is the "Evaluation of the Braithwaite and Old Main Buildings" dated December 2001. Any and all of the firms that prepared or assisted in preparing the evaluation, may also propose for the services solicited in this SFC.

Work

The work of the project shall include, but is not limited to the following:

- Any and all necessary site geotechnical investigation/analysis and site surveying services.
- The program and contract documents shall utilize and bring up to date the recommendations contained in the "Evaluation of the Braithwaite and Old Main Buildings."
- Provide consultant services including programming, schematic design, design development, and contract documents. Also, provide consultant services for the VBS contractor selection, construction contract negotiation, construction administration, and post construction services.

Time

Of particular interest and concern is the team's ability to deliver the project within the specified time. Teams will need to demonstrate the method of delivery and the competency of the individuals who will manage its work. All team Management Plans and Schedules are required to reflect the Project Schedule requirements. Failure of the team Management Plan and Schedule to comply with the Project Schedule will not necessarily be an automatic disqualification. However, it will be evaluated by the VBS Selection Committee in determining which team provides the best value.

Project Description

Page No. 2

Seismic Upgrade

DFCM and SUU have expended a considerable amount time investigating the structural reinforcing process known as “center coring.” Per our investigations, evaluations, and experience with the recently completed Braithwaite project, this project’s primary exterior wall reinforcement shall be shotcrete. However, we will consider the possibility of an exterior wall reinforcement system that combines shotcrete with center coring, with shotcrete still as the primary reinforcement.

Examination of Building and Site

Before submitting the Management Plan, teams may examine the site and ascertain all of the physical conditions of the Old Main Building and its immediate surroundings. All teams desiring to do so must coordinate and schedule their visit with Matthias Mueller at 801.538.3018. Failure to examine the building and site will not release the successful team from performing the work in strict compliance with the terms of the agreement.

PROCUREMENT PROCESS

The State of Utah intends to enter into an agreement with a firm to provide professional services as described.

The selection of the firm will be made using a Value Based Selection (VBS) system. The Project Schedule lists the important events, dates, times and locations of meetings and submittals. The terms of the project schedule are hereby incorporated by reference and must be met by the selected firm.

1. Solicitation for Consultant Documents

The Solicitation for Consultant (SFC) documents consist of all of the documents listed in the Table of Contents and all said documents are incorporated in this SFC by reference. The SFC will be available at DFCM per the attached schedule and on the DFCM web site at <http://dfcm.utah.gov>.

2. Contact Information

Except as authorized by the DFCM Representative or as otherwise stated in the SFC or the pre-submittal meeting, communication during the selection process shall be directed to the specified DFCM Representative. In order to maintain the fair and equitable treatment of everyone, Consultants shall not unduly contact or offer gifts or gratuities to owners, users or selection committee members in an effort to influence the selection process or in a manner that gives the appearance of influencing the selection process. This prohibition applies before the SFC is issued, as the project is developed, and extends through the award of an agreement. Failure to comply with this requirement may result in a disqualification in the selection process. Consultants should be aware that selection committee members will be required to certify that they have not been contacted by any of the Consultants in an attempt to influence the selection process.

3. Requests for Information

All requests for information regarding this project shall be in writing and directed to:

Matthias Mueller (DFCM Representative)
Division of Facilities Construction and Management
4110 State Office Building
Salt Lake City, Utah 84114
E-mail: mmueller@utah.gov
Facsimile: 801.538.3267

4. Project Schedule.

The Project Schedule lists the important events, dates, times, and locations of meetings and submittals that must be met by the Consultant.

5. Mandatory Pre-Submittal Meeting

A mandatory pre-submittal meeting will be held on the date and time and at the location listed on the Project Schedule.

A representative from each interested prime firm is required to attend. During the meeting, a presentation will be made to describe the overall scope of work and intended schedule. Interested firms may ask questions and request clarification about the project and the procurement process.

Subconsultants are invited to attend this meeting but it is not mandatory.

**THE PRIME FIRM'S ABSENCE FROM THE PRE-SUBMITTAL MEETING
AND/OR FAILURE TO REGISTER PRECLUDES PARTICIPATION AS A
SUBMITTING FIRM ON THIS PROJECT.**

6. Submittal Due Dates and Times

All required submittals must be delivered to, and be received by, the Division of Facilities Construction and Management previous to the date and time indicated in the Project Schedule. Submittals received after the specified time will not be accepted. Please allow adequate time for delivery. If using a courier service, the submitting firm is responsible for ensuring that delivery will be made directly to the required location.

7. Last Day to Submit Questions

All questions must be received at the office of DFCM no later than the time and dated listed in the Project Schedule. Questions must be submitted in writing to Matthias Mueller at DFCM.

8. Addendum

All references to questions and requests for clarification will be in writing and issued as addenda to the Solicitation for Consultant Services. Addenda will be provided to every entity that has registered for receiving documents. The addenda or notice of the Addendum will be posted on DFCM's web site.

Any addenda issued prior to the submittal deadline shall become part of the Solicitation for Consultant Services and any information required shall be included in your submittal.

9. Past Performance and References

As a Consultant completes each DFCM project, DFCM, the contractors and the using agency or institution will evaluate the Consultant. It is the intent of DFCM that this process will be the major source for evaluating past performance.

Consultants shall submit past performance and reference information by the time indicated on the Project Schedule.

For all DFCM projects completed in the last 5 years identify the project by name, number and DFCM project manager. Each Consultant wishing to compete for this project that has not completed at least three DFCM projects in the last 5 years, will be required to provide one copy of a list of references on additional similar projects for a total of 3 projects.

For non-DFCM projects provide the following information:

Point of Contact:	Person who will be able to answer any customer satisfaction questions.
Phone Number:	Phone number of the contact we will be surveying.
User Name:	Name of Company / Institution that purchased the construction work.
Project Name:	Name of the project.
Date Completed:	Date of when the work was completed.
Address:	Street, city and state where the work was performed.
Size:	Size of project in dollars.
Duration:	Duration of the project / construction in months.
Type:	Type of the project (i.e.: School, Offices, Warehouse, etc)

10. Management Plan

Firms will be required to develop and submit a plan demonstrating how they will manage their responsibilities, identifying risks, and how risks will be mitigated. An organization chart showing the roles and responsibilities of all pertinent decision-makers is a required part of the presentation.

Address project specific criteria, risks that have been identified by the SFC and additional risks that the team has identified. State how those risks will be mitigated.

As part of the Management Plan include your proposed project schedule. Indicate critical dates and other information in sufficient detail for the selection committee to determine if the time frames are reasonable.

The Management Plan should be concise yet contain sufficient information for evaluation by the selection committee.

The submitting firm shall provide seven (7) copies of the Management Plan by the time indicated on the Project Schedule.

11. Statements of Qualifications

The submitting firm shall provide seven (7) copies of the Statements of Qualifications by the time indicated on the Project Schedule.

The Statement of Qualifications is a short document that indicates the experience and qualifications of the firm, the project manager and other critical members of the team. It describes what talents their team brings to the project, how their knowledge of the subject will provide benefit to the process, how the team has been successful in the past and how that relates to this project. It should include information on similar projects that have been completed by the firm, project manager and other team members. Include the experience and special qualifications that are applicable to this project and/or are part of the project specific selection criteria.

12. Selection Committee

The Selection Committee will be composed of individuals from the Utah State Building Board, DFCM, the User Agency / Institution, representatives from the design and construction disciplines, and others deemed appropriate by the Owner.

13. Termination or Debarment Certifications

The firm must submit a certification that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from soliciting work by any governmental department or agency. The firm must also certify that neither the firm nor its principals have been terminated during the performance of a contract or withdrew from a contract to avoid termination. If the firm cannot certify these two statements the firm shall submit a written explanation of the circumstances for review by DFCM. Firms are encouraged to submit these certifications with their Statement of Qualifications but they may be submitted up until the time the selection is completed.

14. Interviews

Interviews will be conducted with all firms who have met all of the requirements except as follows. If more than six firms are eligible for interviews, DFCM may convene the selection committee to develop a short list of not less than five firms to be invited to interviews. This evaluation will be made using the selection criteria noted below base on the information provided by the past performance/references, performance plan and statement of qualifications.

The purpose of the interview is to allow the firm to present its qualifications, past performance, management plan, schedule and general plan for accomplishing the project. It will also provide an opportunity for the selection committee to seek clarifications from the firm.

The proposed primary project management personnel, including the project manager, should be in attendance. The project manager is the firm's representative who has overall job authority, will be in attendance at all job meetings, and is authorized by the firm to negotiate and sign any and all change orders in the field, if necessary. Unless otherwise noted, the attendance of subconsultants is at the discretion of the firm.

The method of presentation is at the discretion of the firm. The interviews will be held on the date and at the place specified in the Project Schedule.

15. Selection Criteria for VBS Professional Services

The following criteria will be used in ranking each of the teams. The team that is ranked the highest will represent the best value for the state. The criteria are not listed in any priority order. The selection committee will consider all criteria in performing a comprehensive evaluation of the proposal.

- A. DFCM Past Performance Rating. Each prime firm will be given a past performance rating. The rating will be based first on how well the firm did on past projects with DFCM. If a minimum of three DFCM past performance ratings are not available a rating will be established using any DFCM past performance ratings that are available, supplemented by references supplied by the firm at the time the Management Plans and SOQ are submitted.
- B. Strength of Team. Based on the statements of qualifications, the interview, and management plan, the selection team shall evaluate the expertise and experience of the team and the project lead as it relates to this project in size, complexity, quality, duration, etc. Consideration will also be given to the strength brought to the team by critical consultants including how they were selected and the success the team has had in the past in similar projects.
- C. Project Management Approach. Based on the information provided in the statements of qualifications, the management plan and information presented in the interview the selection team shall evaluate how each team has planned to approach the project. The selection team will also evaluate the degree to which risks to the success of the project have been identified and a reasonable solution has been presented.
- D. Schedule. The Consultant's schedule will be evaluated as to how well it meets the objectives of the project. Unless other objectives are stated the shorter the duration that is evaluated to be feasible while achieving an appropriate design is preferred. The Consultant shall discuss during the interview the project schedule identifying major work items with start and stop dates that are realistic and critical subconsultants and if they have reviewed and agree to the schedule. The completion dates shown on the schedule will be used in the contract.

The following criteria are project specific. They are added to the above criteria in determining the selection that represents the best value for the state.

- Demonstrate the capacity and commitment of the team to devote the necessary time to the project to maintain schedule and quality. The team's proposed project schedule effectively and realistically demonstrates how the program and contract documents will be delivered on time or ahead of schedule while still producing a quality program and design.
- The team's expertise in programming/designing historical facility remodels and past similar project success with significant importance placed on seismic and code upgrades, brick masonry/stone restoration, and mechanical/electrical remodeling.
- The team's history of working together on other similar seismic upgrade and historical remodel projects.

16. Fee Negotiation

Following selection of a design firm by the Selection Committee and prior to the award of the design agreement, DFCM will negotiate the final agreement fee with the selected firm. Should the Owner be unable to agree to a satisfactory contract with the top ranked firm at a price that DFCM determines to be fair and reasonable to the State, discussions with that firm shall be formally terminated. Negotiations will then be undertaken with the second ranked firm.

This process will be repeated until an agreement is reached or DFCM determines that it is in the best interest of the State to initiate a new selection process.

17. Form of Agreement

At the conclusion of negotiations, the selected Consultant will be required to enter into an agreement using the attached form of Agreement between Owner and Consultant.

18. Licensure

The Consultant shall comply with and require its subconsultants to comply with the license laws of the State of Utah.

PROJECT SCHEDULE

Project Name: OLD MAIN BLDG REMODEL AND SEISMIC UPGRADE SOUTHERN UTAH UNIVERSITY – CEDAR CITY, UTAH				
DFCM Project No. 03234730				
Event	Day	Date	Time	Place
Advertisement Placed	Sunday	Dec 21, 2003		Multi-Media
Solicitation for Consultant Available	Monday	Dec 22, 2003	10:00 am	DFCM, 4110 State Office Building, SLC, UT 84114 and DFCM web site *
Mandatory Pre-submittal Meeting	Friday	Jan 2, 2004	10:00 am	SUU Old Main Building Cedar City, Utah
Last Day to Submit Questions	Friday	Jan 9, 2004	4:00 pm	DFCM. 4110 State Office Building, SLC, UT 84114
Final Addendum Issued	Tuesday	Jan 13, 2004	4:00 pm	By Fax or posted on DFCM website *
Management Plans, References, Statements of Qualifications, and Termination/Debarment Certifications Due	Thursday	Jan 15, 2004	12:00 Noon	DFCM, 4110 State Office Building, SLC, UT 84114
Short Listing by Selection Committee, if applicable.	Wednesday	Jan 21, 2004	4:00 pm	
Interviews	Wednesday	Jan 28, 2004	To be announced	DFCM, 4112 State Office Building, SLC, UT 84114
Announcement	Thursday	Jan 29, 2004		

* DFCM'S web site address is <http://dfcm.utah.gov>

AGREEMENT BETWEEN OWNER AND CONSULTANT

This AGREEMENT is made this _____ day of _____, 20____,

BETWEEN the Division of Facilities Construction and Management, hereinafter referred to as Owner,

and the Consultant,

a _____, duly qualified to conduct business in the State of Utah, whose address is _____,

For the following Project:

The Owner and Consultant agree as follows.

ARTICLE I. DOCUMENTS

A. GENERAL CONDITIONS, DESIGN CRITERIA, CAD

1. This Agreement includes all the documents and provisions set forth herein, including those incorporated by reference.
2. The Consultant and Owner shall be bound by their respective obligations, duties and rights as referred to in the "General Conditions" which is current as of the date of this Agreement and on file with the Division of Facilities Construction and Management and by this reference incorporated herein. It is intended that this Consultant's Agreement not reiterate the applicable provisions of said General Conditions and the fact that some provisions are reiterated herein does not lessen the importance of the provisions that are not so reiterated. If the Consultant does not have a copy of said General Conditions, the Consultant shall obtain such copy from the Division of Facilities Construction and Management. Without discounting the need for the Consultant to be familiar with all of the General Conditions, Article 4 of the General Conditions provides the requirements for Administration of the Contract and describes many responsibilities and obligations of the

Consultant, as defined in the General Conditions, that are incorporated by reference into this Consultant's Agreement. Unless the context provides otherwise, all the definitions and interpretations of provisions of this Consultant's Agreement shall be as stated in said General Conditions. In case of conflict between the provisions of this Consultant's Agreement and the General Conditions, the provisions of this Consultant's Agreement shall control. The Consultant shall become familiar with and comply with the bidding documents. The bid forms will be provided to Consultant by the Owner.

3. The "DFCM Design Criteria" and the "DFCM Cad Criteria", which is a supplement to the National Cad Standard, and which are current as of the date of this Agreement, on file with the Division of Facilities Construction and Management and by this reference incorporated herein, a copy of which will be provided to the Consultant upon request, shall be reviewed by the Consultant and shall be used to define and/or supplement any terms or responsibilities under this Consultant's Agreement. In case of conflict, the following documents supercede each other in accordance with the following respective hierarchy: Codes and applicable law, the attachments hereto, the body of this Agreement, the DFCM Cad Criteria, the DFCM General Conditions, the DFCM Design Criteria..

B. GENERAL REQUIREMENTS

1. The objectives of the Work under this Agreement includes, but is not limited to the following: comply with the requirements of the Predesign Program, provide designs that comply with applicable laws, codes, rules, regulations and quality requirements, to not exceed the established Construction Budget, to maintain Project Schedule, and to work with the Owner and Contractor in such a professional manner as to provide accomplishment of all these objectives.
2. The physical characteristics of the site are provided in Site Information (Attachment "G").
3. The Owner's Predesign Program is described in the Scope of Consultant's Services (Attachment "A").
4. The budget requirements are as follows: the Construction Budget referred to in this Agreement, is the estimated cost of the work to be performed by the construction contractor(s) in the Contractor's Agreement. Prior to the execution of this Agreement, there has been an agreement between the Owner and Consultant as to the Construction Budget for the Project. This Construction Budget is identified in the Scope of Consultant's Services (Attachment "A"). The Owner and Consultant agree to negotiate mutually acceptable

revisions in the Construction Budget and Consultant's compensation under this Agreement when the Project scope and/or quality is changed by the Owner during the course of this Agreement.

5. The schedule requirements are as follows: Time is of the essence. The Consultant shall commence and prosecute the work diligently so as to be in compliance with the Project Schedule (Attachment "B") attached hereto and incorporated herein provided, however, the Consultant shall not be responsible for failure to comply with the Project Schedule or any portion thereof to the extent such noncompliance is not due to the fault of the Consultant.
6. Authority to Commence Work. Until such time as this Agreement has been fully executed, Consultant is neither obligated nor authorized to commence work under this Agreement and under no circumstance shall any compensation be due Consultant from Owner.
7. Good Faith. Any approval, action, activity, decision and/or recommendation by Consultant or Owner shall be made in good faith.

C. PROJECT TEAM

1. The Owner's Designated Representative is the Program Director of DFCM assigned to the subject project.
2. The Consultant and subconsultants have been selected to perform the services of this Agreement because of the skills and expertise of designated key personnel.
 - a. At the Consultant's sole expense, the Consultant shall subcontract with subconsultants necessary to provide the services of this Agreement. All subconsultants must be appropriately licensed in the State of Utah for the professional services provided on the Project. The names of the subconsultants, which must include the names of those relied upon in the selection process, shall be submitted to the Owner for written approval by the Director or the Owner's designated representative prior to their subcontract with the Consultant. All subconsultants, including additional subconsultants, must be approved in advance and in writing by the Owner. No change in the scope of work or identity of any subconsultant, including those identified in the selection process with the Owner, shall occur without the Owner's advance written approval.
 - b. On the Consultant Organization Chart (Attachment "F"), the Consultant shall furnish the name of all key personnel in the Consultant's and the subconsultants' firms that will be associated with the Project including an organizational chart identifying all key personnel and their titles. Key personnel

assignments in Attachment "F" shall, as to all firms and personnel assignments identified in the Consultant's procurement submittals, be the same as set forth in said submittals unless otherwise approved in advance and in writing by Owner.

3. As approved by the Owner in the selection process, the Consultant has designated the qualified senior staff member as its designated representative in its Consultant Organization Chart (Attachment "F"). The designated representative shall not be changed without written approval in advance by the Owner. Consultant shall provide for the same requirements of the subconsultants.

ARTICLE II. RESPONSIBILITIES OF THE PARTIES

A. OWNER RESPONSIBILITIES

1. The Director of the Division of Facilities Construction and Management shall designate an individual to serve as Owner's Representative, which individual is the sole person authorized to act on behalf of the Owner. The Owner's Representative shall:
 - a. to the fullest extent permitted by law, have authority to represent and bind Owner under this Agreement;
 - b. timely render decisions on behalf of Owner to avoid unreasonable delays in the orderly progress of the Project.
2. Unless otherwise expressly agreed herein, the Owner shall at its sole cost and expense:
 - a. place advertisements for bids or proposals;
 - b. conduct bid or proposal openings and interviews;
 - c. timely provide and update Consultant with available "public" information in Owner's possession regarding the Project, including but not limited to, legal descriptions, topographic surveys, ALTA or other boundary surveys, utility surveys, record drawings, reports, project objectives, budgets, and other material requirements and limitations.
 - d. Notify Consultant of any known fault, known defect, or known deficiency in the Project, including but not limited to acts, errors, omissions, or inconsistencies in Consultant's services and Deliverable Instruments of Service. Notwithstanding this

provision, any failure to notify the Consultant, shall not relieve the Consultant of any responsibility or liability for such fault, defect or deficiency.

3. The Owner may conduct an evaluation of the Consultant's services, including specific personnel of Consultant or any subconsultant at any time.
4. Other Owner specified services as described in Attachment "A" hereto.

B. CONSULTANT

1. In General. Consultant shall provide all services identified in the Scope of Consultant's Services, Attachment "A", including services incidental to said identified services as established by standard professional custom and practice.
2. Direction from Owner's Designated Representative only. Consultant has neither the responsibility nor the authority to accept directives or determinations from any person other than the Owner's designated representative. The Consultant shall not take any direction from the User's, Contractor's or any other third party's representative.
3. Standard of Care; Responsibility. Consultant shall exercise the degree of skill and diligence as exercised by members of the Consultant's profession having substantial experience on projects similar in type, magnitude and complexity to the Project that is the subject of this Agreement. The Consultant shall be liable and responsible for damages, additional burdens and penalties caused by the failure to meet this standard set forth in this Agreement. This standard of care may be further modified in the Attachments hereto.
4. Peer Review of Design Documents. At the completion of the Schematics and Contract Document phases of design, Consultant shall obtain a peer review of the documents prepared under that design phase. This peer review shall address compliance with applicable building codes, ADA requirements, the Owner's Design Standards, and coordination of the documents. The review shall be performed by a licensed architect, structural engineer, mechanical engineer and electrical engineer who are independent of the Consultant and the Consultant's Subconsultants. The Consultant shall submit a written statement from the persons performing the peer review documenting the review comments. The Consultant shall indicate which review comments have been incorporated into the design submittal and shall provide a justification for those which were not. Requirements for the peer review may be modified in Attachment A. All costs related to the peer review shall be the sole responsibility of the Consultant and are considered a part of the Consultant's fee.

5. **Consultant Responsibility.** The Consultant's responsibilities for costs and damages to the Owner resulting from errors and omissions and other breaches of the standard of care of this Agreement are as follows. The Consultant shall not be liable for the construction cost to remedy errors or omissions until the cumulative amount of the costs and damages from all errors and omissions reaches 2.0% (two percent) of the initial Construction Contract amount. When the cumulative construction cost to correct errors and omissions exceeds 2.0% (two percent) of the initial Construction Contract amount, the Consultant shall be responsible for all costs and damages in excess of this threshold resulting from errors and omissions and other breaches of the standard of care of this Agreement for corrective action except that the Consultant's responsibility for that portion of the construction work that provides a "betterment" to the Owner shall be 10% (ten percent) of the cost of any construction work obtained by change order. Costs and damages, include, but are not limited to: demolition, cutting, patching, repairs, removal or modification of work that is already in place, increased material costs, any contractor or Owner delay damages, and judgments, fines or penalties against the Owner. The 10% (ten percent) charge to the Consultant for construction work that provides a "betterment" to the Owner is fixed and agreed upon by the Owner and Consultant as fixed and agreed upon by the Owner and Consultant as the estimated premium cost of obtaining the work by change order. In addition to the above, the Consultant shall be responsible for any services required of the Consultant or its Subconsultants to remedy the error or omission.
6. **Representative.** The Consultant's Designated Representative identified in the Consultant Organization Chart (Attachment "F") is and shall be authorized to act on the Consultant's behalf and bind the Consultant in regard to the Project.
7. **Independent Contractor.** The Consultant is an independent contractor and not an employee of the Owner. The Consultant shall have no authorization, express or implied, to bind the State of Utah, or the Division of Facilities Construction and Management to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the State of Utah or Owner, except as specifically set forth in this Agreement.
8. **Public Information Release.** The Consultant shall not make any public information release in connection with the Project without advance written permission of the Owner. The Consultant shall require of the Consultant's subconsultants the same agreement to maintain the confidentiality of information. Notwithstanding this provision, the Consultant does not need the Owner's consent to respond to any

information release which is needed to defend the Consultant's interest, or to the extent such public information release is protected by constitutional free speech rights.

9. Conflict of Interest Statement. Except with the Owner's knowledge and advance written consent, the Consultant, including subconsultants at any tier, shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Consultant's or subconsultants' professional judgment or ethical duties with respect to this Project as described in the Conflict of Interest Statement (Attachment "D"). The Consultant shall include a similar conflict of interest prohibition as provided herein within its contract with each subconsultant.
10. Laws, Codes and Regulations. The Consultant shall review all applicable laws, codes, rules, regulations and quality requirements, applicable to the Consultant's services. The Consultant shall in the design of the Project meet all of the requirements imposed by governmental authorities having jurisdiction over the Project. In the case of change(s) or conflicts in the applicable code requirements, laws, rules or regulations, during the work of the Scope of Consultant's Services, when and if the Consultant becomes aware of such change(s) or conflicts, the Consultant shall promptly notify the Owner in writing. If the Owner determines that work that has already been properly performed must now be changed, such change will be considered additional work under this Agreement and the Consultant shall then prepare all documents to comply with the needed change(s).
11. Establish Construction Budget. The Consultant shall maintain a cost control process and complete all design and contract document phases such that the construction cost as identified by the Contractor's bid or proposal and set forth in the initial Owner-Contractor Agreement shall not exceed the Construction Budget. If no acceptable bid is received within the Construction Budget, the Owner in its sole discretion may elect any one or more of the following options:
 - a. Give written approval of an increase in the Construction Budget; and/or
 - b. Rebid or renegotiate the construction contract within a reasonable time; and/or
 - c. Revise the Project scope and/or quality as necessary to meet the Construction Budget; and/or
 - d. Abandon the Project and terminate this Agreement.

If the Owner elects an option or options which does not abandon the Project, the Consultant shall perform the Consultant's services to implement the selected option or options at no additional charge to Owner.

If the Owner determines that there is available time, based upon the need for delivery of the project, which determination shall not be unreasonably withheld, the Owner shall provide the Consultant a reasonable opportunity to revise the design at its own expense in order to cure any deficiency. If the Owner elects to abandon the Project designed by the Consultant and terminate this Agreement, the Consultant shall only be entitled to, as a maximum, compensation for design work approved in writing by the Owner and performed in accordance with this Agreement up to the date of termination.

12. Consultant's portion of Liquidated Damages. The Consultant shall specify the amount of liquidated damages that is related to the Consultant's additional services required as a result of a contractor's delay. If the Owner collects liquidated damages, then the Consultant shall be bound by this specified amount. During any such delay period, the Consultant shall continue to provide the services under this Agreement with the standard of care specified herein.
13. Specific Delay Requirements. The Consultant shall be liable to the Owner for damages incurred to the Owner as a result of impact on the critical path schedule to the extent due to Consultant's error, act or omission.
14. Notification. The Consultant shall promptly notify Owner in writing of facts, events or circumstances of which the Consultant is or should be aware and which have or likely will adversely impact the critical path schedule.
15. Staffing. The Consultant shall maintain the human, physical and other resources reasonably necessary to timely meet its obligations under this Agreement.
16. Owner Reviews, Limitations. The right of the Owner to review and comment upon the work of the Consultant, as well as any approval by the Owner, shall not be construed as relieving the Consultant from its professional and legal responsibility for services required under this Agreement. No review by the Owner, approval or acceptance, or payment for any of the services required under this Agreement shall be construed to operate as a waiver by the Owner of any right under this Agreement or of any cause of action arising out of the performance or nonperformance of this Agreement, and the Consultant shall be and remain liable to the Owner in accordance with applicable law for all damages to the Owner caused by the Consultant's acts, errors and/or omissions.

17. Energy Requirements. For all new facilities, the Consultant shall exercise the standard of care required by this Agreement to comply with the Standard for Energy Efficiency in New State Buildings which is attached to this agreement or as specified in Attachment "A".
18. Source of Specifications Identified. If Consultant incorporates any proprietary specifications or any proprietary portion of its work from a source other than Consultant, then such original source must be clearly identified in the Consultant's work in order for Owner to be aware of its identity and to be able to accept or reject such use of said proprietary source. Only those items specifically approved for "sole source" by the Director of the Division of Facilities Construction and Management may be used as a "sole source" specification. In all specifications, the provisions of Utah Code, Title 63, Chapter 56, the Utah Procurement Code, and all applicable rules enacted pursuant thereto, must be fully complied with by Consultant.

Use of Prototypical Designs or Designs Provided by Owner.

Consultant shall use prototypical designs or other design drawings, specifications or calculations provided by Owner in the request for proposal. Consultant shall recheck such designs and any other design data, drawings, specifications and calculations provided by Owner. Consultant shall correct any error or omission as deemed necessary thereafter, and shall be responsible therefore to the same extent as if such materials had been provided by Consultant under this Agreement. Consultant shall be provided with all change orders, proposed change orders, and clarifications, from previous projects that are applicable to this Project. Consultant shall incorporate all pertinent material into the new plans and specifications. If Consultant has provided design services to Owner on previous projects and has designed buildings similar to the components of this Project, which are in Consultant's charge, at the direction of Owner, Consultant shall modify and reuse existing design as much as possible. Where existing designs are being reused, drawings are required to conform to Owner graphic standards unless prior written approval is given by Owner.

20. Other Requirements. The listing of Energy requirements herein does not limit the need of Consultant to comply with all applicable laws, codes, rules and regulations. The Consultant has provided a list of applicable codes which are included in Scope of Services attachment.
21. Subconsultants. The Consultant shall be responsible and liable to the Owner for the subconsultants services. Consultant shall, without additional expense to the Owner, be responsible for obtaining any business and professional licenses and permits and for complying with any applicable Federal, State, and local laws, codes, and regulations, as necessary for the performance of the Consultant's services.

ARTICLE III.
TERMS AND CONDITIONS

- A. Deliverable Instruments of Service. "Deliverable Instruments of Service" as used in this Agreement shall mean the drawings, specifications, calculations, manuals, reports, official project meeting minutes, project observation reports and/or other information, regardless of medium, identified in and required to be delivered or submitted to the Owner under this Agreement.
1. Ownership. It is acknowledged and agreed that all documents developed pursuant to this Agreement are Instruments of Service. Deliverable Instruments of Service are the sole property of Owner. Owner shall have unlimited rights, for the benefit of Owner, in all said deliverable instruments of service, including, but not limited to use, re-use, modification, and transferability for reference only related to site.
 2. License. Consultant hereby grants Owner a nonexclusive license for governmental purposes to any copyrighted portion of Deliverable Instruments of Service. Such license shall include, but not be limited to, the right to use and reuse such copyrighted materials to construct the buildings, facilities, or other matters covered by such copyrighted materials for additional use and to license such copyrighted materials for reuse. The Owner's rights and licenses in and to said Deliverable Instruments of Service are conditioned upon Consultant receiving all sums related to the Owner approved deliverables due under this Agreement.
 3. Indemnification. Owner's use on other projects, Owner's re-use, or Owner's modification of the Deliverable Instruments of Service shall be at Owner's sole risk and without recourse against Consultant, its subconsultant's at any tier, and their principals, agents and employees. Owner shall hold harmless, indemnify and defend Consultant, its subconsultants at any tier and their respective principals, agents and employees from and against any and all actions, claims, loss, or damages of any nature whatsoever to extent related to and resulting from any said use, re-use, or modification of all or any portion of the Deliverable Instruments of Service by or on behalf of Owner, or under any license issued by, through, or on behalf of Owner, irrespective of any actual or alleged fault on the part of the indemnitee(s). Under no circumstances shall Consultant be indemnified for the use of the Deliverable Instruments of Service for the Project that is the subject of this Agreement.
 4. Access. Consultant, for a period of three (3) years after completion of the Project, agrees to furnish and to provide access to all the aforesaid Deliverable Instruments of Service upon the request of Owner. Owner shall pay all costs for labor, reproduction and/or shipping of requested documents. Owner agrees to make no demand on Consultant for

responsibility for Owner use of such material for any other Owner work which is not the subject of an Agreement between Owner and the Consultant for such use.

5. Stamp. If the Consultant is not the same consultant commissioned for the reuse or modification, prior to reusing or modifying the Deliverable Instruments of Services, Owner shall reasonably remove all indicia of authorship, including the title blocks, names, initials, signatures, and professional stamps of Consultant, its subconsultants at any tier, and their agents and employees.

B. CLAIMS AND DISPUTES.

1. Any and all claims by or disputes between the parties arising out of or related to this Agreement, the parties' performance hereunder, or the parties' relationship as created by this Agreement, shall be processed in accordance with the following protocol.
2. A claim or dispute is defined as any situation wherein the Owner or Consultant seeks to recover, levy, or assess damages, costs, penalties, additional compensation, or other monetary or affirmative relief from or against the other party. The party seeking such relief shall serve a written Notice of Claim upon the other party as herein required within thirty (30) days of the date that the claimant is aware of, or should have been aware of, such claim. The Notice of Claim shall set forth in reasonable detail the nature of and basis for the claim and the nature and amount, if applicable, of the damages or other relief sought. The party receiving a Notice of Claim shall, within thirty (30) days of receipt of said Notice, serve upon the other party as herein required a written Notice of Counterclaim, if any, setting forth in reasonable detail the nature of and basis for the claim and the nature and amount, if applicable, of the damages or other relief sought.
3. The Claim shall be submitted to the Owner Representative which shall be deemed as being submitted to the Director of the Division of Facilities Construction and Management (the "Director") for decision. The Director or his/her designee shall, within sixty (60) days of said submission, conduct an informal de novo hearing with the parties on the claim and, within thirty (30) days of the close of said hearing, issue a written decision on the claim. If the Director does not timely conduct an informal hearing or timely issue a decision on the claim, the claim shall be deemed as having been submitted to mediation as hereinafter described. If the Director timely conducts an informal de novo hearing with the parties and issues a written decision on the claim and either party rejects the decision, that party shall within thirty (30) days of receipt of said decision notify the Owner Representative in writing as herein required of said rejection, upon which the claim shall be deemed as having been submitted to mediation as hereinafter

described. Failure to give such notice of rejection constitutes acceptance of the Director's decision.

In lieu of conducting an informal de novo hearing on the claim, the Director may refer the claim to a neutral, expert panel, which referral shall be made within fourteen (14) days of the date the claim was submitted to the Director for decision. The panel shall include a design professional licensed in Utah and an attorney licensed in Utah having substantial experience in design and construction issues. The panel shall, within sixty (60) days of receipt of the claim from the Director, recommend in writing a decision on the claim to the Director. The Director shall, within fourteen (14) days of receiving said recommendation, issue a written decision on the claim. If either party rejects the decision, that party shall within thirty (30) days notify the Owner Representative in writing as herein required of said rejection, upon which the claim shall be submitted to mediation as hereinafter described. Failure to give such notice of rejection constitutes acceptance of the Director's decision. If the Director does not timely issue a decision as contemplated, the claim shall be submitted to mediation as hereinafter described.

4. The Owner Representative, the Director or his/her designee, or the neutral, expert panel, as applicable, may conduct such investigation as is reasonably necessary to an informed decision or recommendation and the parties shall reasonably cooperate in any such investigation. Said investigation and the parties' cooperation therein constitute compromise negotiations under Rule 408, Utah Rules of Evidence.
5. Claims not resolved as hereinabove described and any and all other claims or disputes arising out of or related to this Agreement, the parties' performance hereunder, or the parties' relationship as created by this Agreement, shall be submitted to mediation prior to initiation of litigation. Mediation of any such other claim or dispute may be demanded by either party at any time upon written notice to the other party as herein provided. In furtherance of this agreement to mediate, the parties shall: (i) select a mutually-acceptable mediator; (ii) exchange discoverable documents which either reasonably believes to be relevant and material to the issue(s) in dispute and necessary to an effective mediation; (iii) engage and cooperate in such further discovery as they may agree or which the mediator suggests may be necessary to facilitate an effective mediation; (iv) exchange written position papers which state their position in the dispute and outline the subject matter and substance of the anticipated testimony of individuals having personal knowledge of the facts underlying the dispute, and; (v) mediate in good faith. In the event the parties are unable to agree upon a mediator, the mediator shall be appointed by a court of competent jurisdiction. Witness expenses shall be borne by

the party producing the witness. Mediator fees and expenses, reasonable attorney fees, filing fees, administration fees and expenses, and deposits, if any, shall be paid equally by the parties. The mediator shall have the same immunity as is available to federal district court judges.

6. The prevailing party shall be entitled to reasonable attorney fees if so specified in an Attachment hereto.
7. Unless otherwise provided, this Agreement shall be governed by the laws of the State of Utah. Salt Lake County, State of Utah, shall be the venue of any legal proceeding regarding the terms or enforcement of this Agreement.
8. Any time limit described herein may be extended by written agreement by the Consultant and the Owner.

C. INSURANCE

1. The Consultant, at the request of the Owner, shall be required to comply with the State of Utah's Owner Controlled Insurance Program (OCIP) insurance requirements imposed by the State of Utah's Risk Manager as well as OCIP Requirements Attachment "H".
2. To protect against liability, loss and/or expense arising in connection with the performance of services described under this Consultant's Agreement, the Consultant shall obtain and maintain in force during the entire period of this Consultant's Agreement without interruption, at its own expense, insurance from insurance companies authorized to do business in the State of Utah, in a form and content satisfactory to the Owner, and rated "A" or better with a financial size category of (a) Class X or larger where the applicable Construction Budget is \$1,000,000 or greater; or (b) Class VII or larger where the applicable Construction Budget is under \$1,000,000. All said ratings and financial size categories shall be as published by A.M. Best Company at the time this Consultant's Agreement is executed. All the following listed insurance shall be provided by the Consultant:

- a. **Consultant's Professional Liability Insurance.** The Consultant shall maintain a policy on a claims made basis, annual aggregate policy limit based on the following chart:

<u>Construction Budget</u>	<u>Minimum Liability Coverage</u>
\$10,000,000 and over:	\$1,000,000
\$5,000,000 and above, but under \$10,000,000:	\$500,000
\$250,000 and above, but under \$5,000,000:	\$250,000
Under \$250,000:	No Requirement

The Owner reserves the right to require additional coverage from that stated in the chart herein above, at the Owner's expense for the additional coverage portion only. Owner also reserves the right to require project specific insurance, and if such right has been exercised it shall be indicated as an exhibit to this Agreement. Unless project specific insurance is required by the Owner, the coverage may be written under a practice policy with limits applicable to all projects undertaken by the firm but must be maintained in force for the discovery of claims for a period of three (3) years after the date final payment is made to the Consultant under this Agreement. All policies provided by the Consultant must contain a "retroactive" or "prior-acts" date which precedes the earlier of, the date of the Consultant's Agreement or the commencement of the Consultant's services. The Consultant's policy must also include contractual liability coverage applicable to the indemnity provision of this Agreement for those portions of the indemnity provisions that are insured under the Consultant's policy and in accordance with this Agreement, including the attachments hereto.

- b. Commercial General Liability Insurance. Consultant shall provide, at their own expense, Commercial General Liability Insurance, on an "occurrence basis", including insurance for premises and operations, independent Contractors, projects/completed operations, and contractual liability coverage. Such Commercial General Liability Insurance must provide coverage for explosion, collapse and underground hazards. Said certificate shall state that the policy required by this paragraph has been endorsed to name the State of Utah and DFCM as Additional Insureds. The insurance required by this paragraph shall provide for limits that are not less than the following:

\$2,000,000	General Aggregate
\$2,000,000	Products-Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence
\$ 50,000	Fire Damage (any one fire)
\$ 5,000	Medical Expense (any one person)

- c. Workers' Compensation Insurance and Employers' Liability Insurance. Worker's Compensation Insurance shall cover full liability under the Worker's Compensation Laws of the jurisdiction in which the Project is located at the statutory limits required by said jurisdiction's laws. Employer's Liability Insurance shall provide the following limits of liability: \$100,000 for each accident; \$500,000 for Disease-Policy Limit; and \$100,000 for Disease-Each Employee.

- d. Comprehensive Automobile Liability Insurance including coverage for all owned, hired and non-owned automobiles with limits not less than \$1,000,000 combined single limit per occurrence.
- e. Valuable papers and Records Coverage and Electronic Data Processing (Data and Media) Coverage. The Consultant and all subconsultants of the Consultant shall provide coverage for the physical loss of or destruction to their work product including drawings, specifications and electronic data and media.
- f. Aircraft Use. Consultant using its own aircraft, or employing aircraft in connection with the work performed under this Agreement shall maintain Aircraft Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence. Said certificate shall state that the policy required by this paragraph has been endorsed to name the State of Utah and DFCM as Additional Insureds.
- g. The Consultant shall submit certificates in form and substance satisfactory to the Owner as evidence of the insurance requirements of this Article. Such certificates shall provide the Owner with thirty (30) days notice prior to the cancellation for reasons other than nonpayment of premium or non-renewal of the applicable coverage, and ten (10) days notice prior to cancellation for nonpayment of premium, as evidenced by return receipt, certified mail, sent to the Owner. The Consultant shall notify the Owner within thirty (30) days of any claim(s) against the Consultant which singly or in the aggregate exceed 20% of the applicable required insured limits and the Consultant shall, if requested by Owner, use its best efforts to reinstate the policy within the original limits and at a reasonable cost. The State of Utah shall be named as an insured party, as primary coverage and not contributing, on all the insurance policies required by this Article except the professional liability and workers' compensation policies. The Owner reserves the right to request the Consultant to provide a loss report from its insurance carrier.
- h. The Consultant agrees to maintain all insurance required under this Agreement during the required term. If the Consultant fails to furnish and maintain said required insurance, the Owner may purchase such insurance on behalf of the Consultant, and the Consultant shall pay the cost thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance.

- i. All policies, except Practice Professional Liability Insurance, required shall be endorsed to include waivers of subrogation in favor of the Owner.
- j. Any type of insurance or any increase of limits of liability not described in this Agreement which the Consultant requires for its own protection or on account of any statute, rule or regulation, shall be its own responsibility and at its own expense.
- k. The carrying of any insurance required by this Agreement shall in no way be interpreted as relieving the Consultant (or subconsultants at any tier if this is an OCIP project) of any other responsibility or liability under this Agreement or any applicable law, statute, rule, regulation or order.
- l. Consultant shall not violate or knowingly permit to be violated any of the provision of the policies on insurance required under this Agreement.

D. INDEMNIFICATION

- 1. To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the State of Utah, its institutions, agencies, departments, divisions, authorities, and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, authorized volunteers (hereinafter the above listing of entities and persons is referred to as "indemnities") from and against every kind and character of claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, to the extent caused by any negligent or wrongful act, error or omission of the Consultant, its subconsultants at any tier, or any of their agents, employees, or other persons or entities for whose acts the Consultant or subconsultants at any tier may be liable. The Consultant shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto, but the State of Utah shall have the right, at its option and its own expense, to participate in the defense of any such action without relieving the Consultant of any obligation hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person under this Agreement. In claims against any person or entity indemnified under this paragraph by an employee of the Consultant, anyone directly or indirectly employed by the Consultant, the agent, subconsultant or independent contractor of any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not

be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or said employee, agent, subconsultant, independent contractor or anyone for whose acts any of them may be liable, under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts. Notwithstanding any of the above, to the extent Consultant is complying with a written directive from the Owner, that is not based on the Consultant's recommendation, the Consultant shall not be held liable under the indemnification provisions of this Agreement if the Consultant has promptly disagreed with the written directive by delivering such objection to the Owner in writing.

2. The Owner and the Consultant waive all rights against each other and against the contractors, subcontractors, subconsultants, agents and employees of the other for damages, but only to the extent covered by the Owner's Builder's Risk Policy concerning damage to the Work during construction, except such rights as they may have to the proceeds of such insurance as set forth in the General Conditions. The Owner and the Consultant each shall require similar waivers from their contractors, subcontractors, subconsultants and agents.

E. LIMITATIONS OF ACTIONS

1. An action by or against the Consultant, the Consultant's subconsultant, agent, independent contractor, or anyone for whom the Consultant may be liable, shall comply with and be bound by the applicable and lawful statute of limitation and statute of repose provisions. Notwithstanding this, any action by or against the Consultant, the Consultant's subconsultant, agent, independent contractor, or anyone for whom the Consultant may be liable, that is based in contract or warranty shall be commenced within six (6) years of the date of substantial completion of the improvement or abandonment of construction except the such period of limitation shall be modified as follows:
 - a. In the event that the Consultant, the Consultant's subconsultant, agent, independent contractor, or anyone for whom the Consultant may be liable has fraudulently concealed the act, error, omission or breach of duty, or the injury, damage or other loss caused by the act, error, omission or breach of duty, the six year period shall not begin to run until such time as the Owner discovers or, through the exercise of reasonable diligence, should have discovered its claim.

- b. In the event that the Consultant, the Consultant's subconsultant, agent, independent contractor, or anyone for whom the Consultant may be liable commits a willful or intentional act, error, omission, or breach of duty, the six year period shall not begin to run until such time as the Owner discovers or, through the exercise of reasonable diligence, should have discovered its claim.
- c. In the event of an unintentional and nonfraudulent latent act, error, omission or breach of duty, the Owner shall have the time period allowed by Utah law and the Utah Code, unless a longer period is provided for in an attachment to this Agreement.
- d. These provisions are understood and agreed to by the Consultant as establishing a "different period of limitations" as that term is used in UCA 78-12-21.5(3)(a) or any other similar statute of the Utah Code. These provisions are not intended to shorten any time period allowed by Utah law and code for non-contract actions, including but not limited to, those based in tort.

F. MISCELLANEOUS PROVISIONS

- 1. Third Parties. Nothing contained in this Agreement shall create a contractual relationship or a cause of action in favor of a third party against the Owner and/or Consultant or its subconsultants at any tier.
- 2. Hazardous Materials. Unless otherwise expressly agreed in Attachment "A", the Consultant has no duty to discover, investigate, report, or remediate hazardous materials or toxic substances, including but not limited to those regulated by State or federal authorities, which:
 - (i) may have been used in the construction of pre-existing improvements on the site; (ii) otherwise may be present on the site as of the effective date of this Agreement, or; (iii) which may be used by the Contractor in performing the Work. Subject to these limitations and consistent with the standard of care stated herein, Consultant shall promptly notify Owner of the obvious presence of any such hazardous or toxic materials or substances of which Consultant is or should be aware other than such materials which may be used by the Contractor in performing the Work.
- 3. Promotional Issues. The Consultant shall have the right to include photographic or artistic representations of the design of the Project among the Consultant's promotional and professional materials, provided that the Consultant appropriately gives recognition to the State of Utah regarding the Project. The Consultant shall be given reasonable access to the completed Project to make such representations. However, the Consultant's materials shall not include the Owner's confidential or proprietary information. The Owner shall provide professional credit for the Consultant in the Owner's

promotional materials that relate to the Consultant's work for the Project. Except to the extent related to the Consultant's defense of any statements made by others in regard to the Consultant's performance, and notwithstanding any other provision of this Agreement, the Consultant shall not make any public information release in connection with services performed under this Agreement without the advance written approval of the Director of the Division of Facilities Construction and Management.

4. Binding Issues and Assignment Limitations. This Agreement shall be binding upon the Owner, the Consultant, and their respective partners, employees, agents, joint ventures, successors and assigns. Neither the performance of this Agreement, a right or claim, nor any part thereof including any monies to be paid, may be assigned by the Consultant or Owner without the prior written consent and approval of the other party. The Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Consultant shall execute all consents reasonably required to facilitate such assignment.
5. Entire Agreement Amendment Limitation. This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both Owner and Consultant.
6. Warranty. The Consultant warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement, except bona fide employees or established commercial or selling agencies maintained by the Consultant for the purpose of securing business. For breach or violation of this warranty, the Owner shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, brokerage, or contingent fee.
7. Consultant Records. The Consultant and its subconsultants shall maintain records of its direct labor hours and overhead cost allocation plan, subconsultant costs and other direct job costs pertaining to any services performed by design phase and by extra services under this Agreement.

The Owner shall have the right to access and audit of records of the Consultant if and as provided in State law and rules. The records related to this Project shall be retained by the Consultant in order to facilitate State of Utah access to such records for a period of three (3)

years, or such longer period as required by law, after completion or termination of the work under this Agreement.

8. Notice. Any notice required by this Agreement shall be served upon the recipient's designated representative by hand delivery at the last known business address, or by mail with "delivery confirmation" to the last known address. Notwithstanding any other provision of this Agreement, written notice shall also be deemed to have been duly served by verified use of a FAX system by using the known and operative calling number. Service by use of the FAX system is encouraged when timely notice will benefit the Owner, Consultant, or Contractor. Notice shall be considered complete and verified upon the sending and confirmation of delivery using the FAX system, if on the same day notice is also sent by registered or certified mail, return receipt requested, to the last business address known to the party giving notice, confirming the FAX delivery.
9. Right to Complete. Subject to the termination provisions of this Agreement, the Owner shall have the right to complete the work or any portion thereof by itself or others, and to modify and/or use the Consultant's work in part or in its entirety as hereinabove described.
10. Plan Reviews. The Owner's plan checks and/or plan reviews in no way relieve the Consultant of design liability or contractual responsibility under this Agreement.
11. Discrimination and Sexual Harassment Prohibited. Pursuant to the laws of the State of Utah, the Consultant, or any person acting on behalf thereof, will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, ancestry or national origin. To the extent applicable, said persons will comply with all provisions of Executive Order No. 11246 dated September 24, 1965 and rules, regulations, orders, instructions, designations and other directives promulgated pursuant thereto. The Consultant, or anyone for whose act the Consultant may be liable, shall not act in any manner as would violate the laws, regulations and policies of the United States or the State of Utah prohibiting sexual harassment.
12. Compliance with Contract Documents, Reporting Defects and Deficiencies. The Consultant's construction phase services are set forth in Scope of Consultant's Services, Attachment "A". Site visits identified in Attachment "A" shall require the Consultant to examine the Work of the Contractor in progress to guard the Owner against lack of compliance with the Contract Documents, defects or deficiencies in the Work and to determine whether the Work is proceeding in a manner such that, when completed, will likely be in accordance with the Contract Documents. Except as may otherwise be provided in Attachment "A", the Consultant's on-site construction-phase services are (i) not full-time, continuous, or exhaustive; (ii) do not include a duty

to discover latent defects in the Work; and (iii) do not constitute a guarantee of the Contractor's Work or relieve the Contractor of its responsibilities. Consultant is not responsible for the Contractor's selected means, methods, or sequences of work. The Consultant shall cooperate and assist the Owner in enforcement of the Contract Documents. The Consultant shall promptly report known or obvious defects to the Owner. This provision does not relieve the Contractor of its responsibility to comply with the Contract Documents.

13. Availability of Funds. The obligations of Owner under this Agreement are subject to, and contingent upon, the availability of funds to Owner. The Notice to Proceed issued by Owner for each phase of the project shall mean that funds are available for that phase of the work.
14. No Requirement to Employ on other Projects. The Owner does not assume any obligation to employ the Consultant's services or pay the Consultant royalties of any type for any other project whatsoever.
15. Waivers. No waiver by the Owner or Consultant of any default shall constitute a waiver of the same default at a later time or of a different default.

G. TERMINATION OR SUSPENSION

1. The Owner or Consultant may terminate this Agreement for cause should the other party fail to substantially perform the material covenants herein contained at the time and in the manner herein provided, including the failure to design the project within the Construction Budget. In such event, the party seeking termination shall give the other party fourteen (14) calendar days written notice of intent to terminate for cause. If the other party cures said default, or is diligently pursuing a cure, within said fourteen (14) day period, there shall be no termination for cause.
2. In the event of such termination for cause by the Owner, the Owner may proceed with the work in any manner deemed proper by the Owner. The cost to the Owner or damage to the Owner as a result of the failure to perform shall be deducted from any sum due the Consultant under this Agreement, and the balance, if any, shall be paid to the Consultant upon demand. If the cost or damage to the Owner exceeds the sums due the Consultant, such costs or damages shall be paid to the Owner by the Consultant.
3. In the event of such termination for cause by the Consultant, the Consultant shall be paid all sums owing Consultant through the date of termination. Under no circumstances, shall Consultant be paid for any other sums related to the termination for cause, including but not limited to, lost profits or consequential damages.

4. The Owner reserves the right to terminate this Agreement for convenience or any reason upon fourteen (14) calendar days written notice to the Consultant. In such event, the Consultant shall be paid all sums owing Consultant through the date of termination. Under no circumstances, shall Consultant be paid for any other sums related to the termination for convenience, including but not limited to, lost profits or consequential damages.
5. If the Consultant transacts business as a sole proprietorship, the consultant's death or incapacity shall automatically terminate this Agreement as of the date of such event. Under these circumstances, neither the Consultant nor the Consultant's estate shall have any further right to perform hereunder and the Owner shall pay the Consultant or the estate shall be paid through the date of termination.
6. Promptly after termination and payment of any sums owing the Consultant, the Consultant shall deliver all of the Deliverable Instruments of Services, including those in progress, to the Owner as hereinbefore described.

ARTICLE IV.
SCOPE OF SERVICES AND OTHER SPECIAL
TERMS AND CONDITIONS, AND ADDITIONAL SERVICES

- A. DOCUMENTS. This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement comprises the documents listed below which are all hereby incorporated by reference herein:
1. Agreement Between DFCM and Consultant;
 2. General Conditions, Design Criteria and CAD Criteria on file with the Owner and the current edition as of the date of this Agreement;
 3. Other documents as follows:
 - a. Attachment "A" - Scope of Basic Services, including Design, Pre-Construction and Construction Administration Services. Digital Document requirements shall also be provided in this Attachment.
 - b. Attachment "B" - Project Schedule
 - c. Attachment "C" - Tests, inspections and reports
 - d. Attachment "D" - Conflict of Interest Statement

- e. Attachment "E" - Schedule of Consultant's and Subconsultant's Fees
 - f. Attachment "F" - Consultant Organization Chart
 - g. Attachment "G" - Site Information
 - h. Attachment "H" - OCIP insurance program requirements
- B. Additional Services; In General. Notwithstanding any provision of this Agreement, the Consultant shall not be entitled to any additional compensation or the considering of any work as an additional service when such work is being performed in order to resolve an error or omission of the Consultant or is otherwise required to meet the terms of this Agreement. The Consultant shall perform additional services when authorized by a written modification to this Agreement in advance of the performance of the subject work. Failure of the Consultant to obtain a written approval from the Owner of the cost and authorization to proceed shall result in the Consultant's forfeiture of the right to seek additional compensation for the contended additional service. Consultant shall have no obligation, and shall not, begin or provide any additional services unless and until such written modification has been provided by the Owner. Examples of what may be considered additional services, if approved by the Owner in advance and in writing, include, but are not limited to, the following:
- 1. Revise the Contract Documents and previously approved Schematic Design and Design Development documents to accommodate changes requested by the Owner, excluding corrections of errors, and omissions by the Consultant;
 - 2. Prepare change order documents for revisions and changes when requested by the Owner, excluding corrections of errors and omissions by the Consultant, after a Construction contract has been awarded;
 - 3. Prepare measured drawings of existing structures except as required for planning Project additions or alterations thereto;
 - 4. Select movable furniture, equipment, or other articles which are not otherwise included in the Construction Contract or required by the Scope of Consultant's Basic Services;
 - 5. Provide additional services necessary to correct defects in, or damages to, the Project, excluding corrections arising from the errors and omissions of the Consultant;
 - 6. Provide additional services caused by the breach, default, delinquency or insolvency of the Contractor.

7. Consultant shall upon Owner's written directive incorporate one or more additive alternates into its design documents. If and to the extent the successful bidder's bid incorporating such alternate(s) exceeds the Construction Budget, Consultant shall then be entitled to proportionate, additional compensation. There shall be no deductive alternates.
8. Site visits for construction observation or other purposes related to the Project beyond those specified in this Agreement, except when necessary due to the Consultant's errors and omission. All site visits under this category must be authorized in advance by the Owner;
9. Assist the Owner in defending any claim or action related to or arising out of the Consultant's design, not attributable to errors, omissions, or negligence on the part of the Consultant, of the project brought by a Construction Contractor or any other party;
10. If requested by the Owner, the Consultant shall furnish services concerning replacement of a part or all of the Project damaged during construction;
11. If requested by the Owner, the Consultant shall provide special surveys, environmental studies, and submissions required for approvals of the Owner or others having jurisdiction over the project.
12. Providing additional resources beyond those that could have been reasonably contemplated at the time of entering this Agreement and are reasonably necessary to timely meet its obligations under the Agreement due to facts, events or circumstances beyond its control.
13. If provided for in an Attachment hereto, the Consultant shall provide inspection services for the Project during construction or as otherwise specified in the Attachment.

C. COST PROPOSAL FOR ADDITIONAL SERVICES.

The Consultant has the responsibility to assist the Owner in accomplishing the project within the established budget. The Consultant shall submit a cost proposal in the format shown in Schedule of Consultant's and Subconsultant's Fees (Attachment "E") for any work it considers additional services, within ten (10) calendar days of receipt by Consultant's Representative of a written request from the Owner's Representative. If no cost proposal is submitted within ten (10) calendar days, the Consultant shall perform the work at no additional cost to the Owner. This ten (10) calendar day period may be extended by the Owner upon submission of a written request by Consultant within said ten (10) day period with sufficient justification for the extension. The Owner's approval of the extension will not be unreasonably withheld.

The Schedule of Consultant's and Subconsultant Fees (Attachment "E"), which is deemed to include all salaries, overhead, benefits, administrative costs and profit, shall be utilized for establishing the fee for Additional Services. The Consultant shall have no authority or duty to perform Additional Services unless authorized in advance and in writing by the Owner's Representative.

**ARTICLE V.
COMPENSATION, PAYMENTS
TO THE CONSULTANT, AND DAMAGES**

- A. The consideration to be paid the Consultant, as provided herein, shall be in full and complete compensation for all the Consultant's services and expenses incurred in the performance of this Agreement. Invoices shall include the Owner project and contract number, and be signed by Consultant.
- B. Payment shall be in accordance with the schedule of lump sum payments for each phase listed under this Agreement as shown in the Schedule of Consultant's and Subconsultant Fees (Attachment "E"). Progress payments with respect to such lump sum amounts shall be based upon the percentage of such services completed.
- C. Except for Owner approved additional services described in properly executed written amendment to this Agreement or other adjustments to Consultant's compensation that the Consultant is entitled to under this Agreement, the total compensation payable under the terms of this Agreement shall not exceed the sum identified in the Schedule of Consultant's and Subconsultant's Fees (Attachment "E").
- D. The Owner shall make payments due under this Agreement directly to the Consultant. To the extent the Consultant has not performed in accordance with this Agreement, the Consultant shall not be entitled to compensation and the Owner may withhold an appropriate portion of the payment to Consultant. In addition to any other requirements under this Agreement, the following is required before any payment shall be made and/or deemed owed by Owner:
 - 1. The Consultant shall submit invoices for progress payments not more than once a month. Each invoice shall include a detailed description by line item showing the contract prices, percentage of the services completed for the period, payments received to date, payment requested for the period, the overall percentage of completion, any lien waivers or releases previously requested by Owner;
 - 2. The Owner may, at its discretion, adjust any progress payments so that it corresponds to the percentage of completion as estimated by the Owner. Notice shall be given to the Consultant prior to making any such adjustments;

3. Notwithstanding anything to the contrary contained in this Agreement, the Owner may withhold any payment to the Consultant hereunder if and for so long as the Consultant fails to perform any of its obligations hereunder or otherwise is in default under this Agreement; provided that any such holdback shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Consultant.
- E. The acceptance by Consultant of final payment without a contemporaneous written protest shall release the Owner, from all claims and all liability to the Consultant for fees and costs of the performance of the services pursuant to this Agreement.
- F. Should the Consultant fail to complete the services of this Agreement within the time established by the Project Schedule (Attachment "B"), the Consultant shall be liable to the Owner for the actual damages incurred and such amount, may be deducted from any amount due or that may become due the Consultant. To the extent that the damages exceed any amount that would otherwise be due the Consultant, the Consultant shall be liable for such excess to the Owner. The Owner may seek enforcement of such obligation by legal action, and if such is necessary, shall recover the related costs and attorney fees. This Schedule shall also indicate the amount of retention agreed to in order to facilitate compliance with this requirement.

ARTICLE VI. SPECIALIZED PROCUREMENT SYSTEMS

The Consultant understands that the selection of the Consultant and/or Contractor for the services and work of this Project may have been undertaken pursuant to an information or value-based procurement system. Consultant agrees to cooperate with the Owner and any agent of the Owner that facilitates the use of the Owner's procurement system either on this project or for any other project of the Owner.

ARTICLE VII. EXECUTION

The Consultant and Owner each represent that the execution of this Agreement and the performance thereunder is within their respective duly authorized powers.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE ENTERED INTO THIS AGREEMENT ON THE DAY AND YEAR FIRST WRITTEN ABOVE.

CONSULTANT: _____

Signature Date

Title: _____

State of _____)

)

County of _____)

Please type/print name clearly

On this _____ day of _____, 20____, personally appeared before me, _____, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he (she) is the _____ (title or office) of the firm and that said document was signed by him (her) in behalf of said firm.

Notary Public

(SEAL)

My Commission Expires _____

APPROVED AS TO AVAILABILITY
OF FUNDS:

**OWNER: DIVISION OF FACILITIES
CONSTRUCTION & MANAGEMENT**

Financial Manager, Date
DFCM

Program Director – Capital _____

APPROVED AS TO FORM:
May 5, 2003
By: ALAN S. BACHMAN
Asst. Attorney General

APPROVED FOR EXPENDITURE:

Division of Finance Date

This form may be modified by the time of evaluation.

Project Name _____
Contractor _____
Project Manager: _____
Superintendent: _____

Project # _____
Contract Amt. _____
Program Director _____
Evaluator _____

DFCM A/E Performance Rating

Questions #1 – #7 scored by DFCM Program Director.

1. **Were Project Submittals for the Design Phase Completed on time?**
 - 5 points if completed on time.
 - 4 points if completed within one week of contract date.
 - 3 points if completed within two weeks of contract date.
 - 2 points if completed within 1 month of contract date.
 - 1 point if completed within 2 months of contract date.
2. **Were Submittals (RFIs, Pay Requests, Shop Drawings, etc.) During Construction Processed on Time?**
 - 5 points if completed on time.
 - 3 points if completed within one week of contract requirements.
 - 1 points if completed within two weeks of contract requirements.
3. **Were Closeout Requirements Submitted on Time?**
 - 5 points if submitted within 30 days.
 - 3 points if submitted within 60 days.
 - 1 point if submitted within 90 days.
4. **Compliance with Budget Requirements for Construction Award.**
 - 5 points if the design met significant budget challenges (difficult budget to achieve).
 - 4 points if the design met budget requirements.
 - 3 points if the design required a minor amount of additional funding for construction or deductive change orders.
 - 2 points if the design required a major amount of additional funding for construction or deductive change orders.
 - 1 point if redesign was required.
5. **Validity of Cost Justifications (architect's cost control of change orders).**
 - 5 points for thorough review of change order costs.
 - 3 points for an incomplete review of change order costs.
 - 1 point for no review of change order costs.
6. **Value of Change Orders Based on A/E's Errors and Omissions.**
 - 5 points if errors and omissions = 1% or less.
 - 4 points if errors and omissions = 1.1% to 1.5%.
 - 3 points if errors and omissions = 1.6% to 2%.
 - 2 points if errors and omissions = 2.1% to 2.5%
 - 1 point if errors and omissions = 2.6% to 3%
7. **Management and Quality of Consultants**
 - 5 points for excellent coordination and performance plus consultants add value.
 - 4 points for excellent coordination and performance.
 - 3 points for good coordination and performance.
 - 2 points for fair coordination and performance.
 - 1 point for poor coordination and performance.

DFCM's Rating of the A/E Firm: _____

Program Director should provide an overall rating of the A/E firm's performance based on the scores above.
(5 = highest: 1 = lowest)

Agency's Rating of the Firm: _____

The Agency's overall rating of the A/E Firm at time of substantial completion based on (a) Quality of Construction Documents, (b) Project Administration, and (c) Compliance with Contractual Commitments.
(5 = highest: 1 = lowest)

Contractor's Rating of the Firm: _____

The Contractor's overall rating of the A/E Firm at time of substantial completion based on (a) Quality of Construction Documents, (b) Project Administration, and (c) Compliance with Contractual Commitments.
(5 = highest: 1 = lowest)

This form may be modified by the time of evaluation.

Project Name: _____
Program Director _____
Evaluator: _____

Project # _____
Date: _____

A/E & Contractor Evaluation of DFCM Performance

1. Project Knowledge

Did the Program Director/Project Manager demonstrate a clear understanding of the project and the key issues affecting the project?

- 5 points for excellent project knowledge and understanding.
- 3 points for good knowledge and understanding.
- 1 point for fair knowledge and understanding.
- 0 points for poor knowledge and understanding.

2. Project Management

Did the Program Director/Project Manager provide effective project management? Did the Program Director/Project Manager effectively direct the work of the A/E Team and the Contractor? Were meetings well organized, meaningful and held on a regular basis?

- 5 points for excellent coordination and project management.
- 3 points for good coordination and project management.
- 1 point for fair coordination and project management.
- 0 points for poor coordination and project management.

3. Problem Resolution

Did the Program Director/Project Manager demonstrate effective conflict resolution skills? Were conflicts resolved fairly and timely?

- 5 points for excellent conflict resolution skills.
- 3 points for good conflict resolution skills.
- 1 point for fair conflict resolution skills.
- 0 points for poor conflict resolution skills.

4. Communication/Timeliness

Did the Program Director/Project Manager demonstrate effective communication skills? Were instructions communicated clearly? Were phone calls returned? Were contract modifications completed quickly? Were change order payments processed promptly?

- 5 points for excellent communication skills.
- 3 points for good communication skills.
- 1 point for fair communication skills.
- 0 points for poor communication skills.

5. DFCM Inspection Service

Were inspections completed on the date and time scheduled?

- 5 points if completed on time.
- 4 points if completed one day late.
- 3 points if completed two days late.
- 2 points if completed three days late.
- 1 point if completed four days late.
- 0 points if completed five or more days late.